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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,928	01/09/2006	Christoph Herrmann	DE030245	3779
24737 7590 02/05/2009 PHILIPS INTELLECTUAL PROPERTY & STANDARDS P.O. BOX 3001 BRIARCLIFF MANOR, NY 10510				
EXAMINER ANWAR, MOHAMMAD S				
ART UNIT 2416		PAPER NUMBER		
MAIL DATE 02/05/2009		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/563,928

**Applicant(s)**

HERRMANN ET AL.

**Examiner**

MOHAMMAD ANWAR

**Art Unit**

2416

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments, see below, filed 11/19/08, with respect to the rejections of claims 1-12 have been fully considered and are persuasive. Therefore, the previous rejection has been withdrawn. However, upon further consideration, a new grounds of rejection is made in view of the newly cited reference which address the applicant arguments.
2. All drawings, claim objections and 112 2<sup>nd</sup> rejections are hereby withdrawn.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-2, 5-16, 19-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Kuchibhotla et al. (U.S. Patent No. 7,414,989).

**For claims 1, 8, 10, 11 and 12**, Kuchibhotla et al. disclose method of transmitting data packets from a transmitter to a receiver (see column 7 lines 41-52), wherein an indicator is sent along with each data packet of the data packets (see column 10 lines 46-47, a new data indicator NDI); wherein the indicator indicates

whether the respective data packet is a new data packet (see column 14 lines 1-2, where NDI bit indicates it is a new data) or a re-sent data packet (see column 13 lines 60-61, where NDI bit indicates it is previous or resent data); wherein, when the receiver receives a first data packet with an error, the receiver sends a negative confirmation (NACK) message to the transmitter (see column 5 lines 30-32, where a NACK is sent); and wherein, if the receiver subsequently decodes an error-free second data packet that was sent along with the indicator indicating that the second data packet is a new data packet, the receiver sends a revert (REV) confirmation message that acknowledges receipt of the second data packet and requests the transmitter to re-send the first data packet (see column 14 lines 27-30 where an NDE indication of 0 and 1 with the acknowledgement scheme can ask the transmitter to resend or not send the previous data).

**For claim 2**, Kuchibhotla et al. disclose wherein, when the receiver receives an error-free data packet, the receiver sends a third an acknowledgement confirmation (ACK) message to the transmitter (see column 16 lines 25-26)

**For claim 5**, Kuchibhotla et al. disclose wherein the transmitter ignores the revert confirmation message and sends a new third data packet (see column 14 lines 56-57).

**For claim 6**, Kuchibhotla et al. disclose wherein the indicator has a length of 1 bit (see column 14 lines 1-2 indicates 1 bit either 0 or 1).

**For claims 7 and 9**, Kuchibhotla et al. disclose wherein the method is an extension of the HARQ protocol in UMTS, and wherein the indicator is sent via the high speed control channel of UMTS (see column 9 lines 39-49, column 4 lines 22-24).

**For claim 13**, Kuchibhotla et al. disclose sending a negative (NACK) confirmation message from a receiver indicating to the transmitter that an immediately preceding data packet is to be resent (see column 3 lines 34-37), and sending a revert (REV) confirmation message from the receiver if a subsequently received data packet includes an indicator that this received data packet is not a retransmission in response to the negative confirmation message, wherein the revert confirmation message indicates to the transmitter that the received data packet has been received without error, and that the immediately preceding data packet before the received data packet is to be resent ( see column 14 lines 27-30 and column 15 lines 50-54 where it is clearly explained as to acknowledgement and negative acknowledgement messages using NDE bit to indicate if the previous message was received properly or not).

**For claim 14**, Kuchibhotla et al. disclose wherein the indicator indicates whether the received data packet is a newly transmitted data packet. (see column 14 lines 1-2).

**For claim 15**, Kuchibhotla et al. disclose including receiving another data packet at the receiver and sending an affirmative (ACK) confirmation message from the receiver if an error is not detected in the another data packet (see column 14 lines 27-30, column 15 lines 39-40 where NDE bit of 1 indicates that the previous data was received properly).

**For claim 16**, Kuchibhotla et al. disclose transmitting a data packet of a series of data packets from a transmitter to a receiver (see Figure 8 where a series of packets are sent), receiving a revert (REV) confirmation message from the receiver indicating that the data packet has been received satisfactorily at the receiver and that an

immediately prior data packet in the series of data packets is to be retransmitted (see column 14 lines 27-30 where NDE bit of 0 would indicate that the previous data was not received properly), and selectively transmitting the immediately prior data packet (see column 16 lines 56-57).

**For claims 19 and 20**, Kuchibhotla et al. disclose including receiving an affirmative (ACK) confirmation message and transmitting a next data packet of the series of data packets in response to the affirmative confirmation message, including receiving a negative (NACK) confirmation message and retransmitting the next data packet in response to the negative confirmation message (see column 3 lines 34-37).

**For claim 21**, Kuchibhotla et al. disclose at least one transmitter and at least one receiver, wherein each transmitter and receiver is configured to execute a protocol that includes three confirmation message types: an affirmative confirmation (ACK) that signals to the transmitter that a most recently transmitted data packet has been received satisfactorily at the receiver (see column 14 lines 7-8); a negative confirmation (NACK) that signals to the transmitter that the most recently transmitted data packet has not been received satisfactorily at the receiver (see column 14 lines 2-3); and a revert confirmation (REV) that signals to the transmitter that the most recently transmitted data packet has been received and that an immediately prior transmitted data packet has not been received satisfactorily at the receiver (see column 14 lines 27-40, using ACK/NACK with NDE bit as revert message to indicate if the previous data was received properly or not).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 3 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuchibhotla et al. in view of Ulug (Patent No. 4,312,065).

**For claims 3 and 18**, Kuchibhotla et al. discloses all the subject matter but fails to mention wherein a third data packet without data packet is sent in response to the revert confirmation message. However, Ulug from a similar field of endeavor discloses wherein a third data packet without data packet is sent in response to the revert confirmation message (see column 17 lines 43-46). Thus, it would have been obvious to one ordinary skill in the art at the time of invention was made to include Ulug null packet scheme into Kuchibhotla packet transmission scheme. The method can be implemented in a packet transmitter. The motivation of doing this is to control transmission of data packets.

9. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kuchibhotla et al. in view of Dotling et al. (background U.S. Patent No. 7,249,303).

**For claim 4**, Kuchibhotla et al. disclose all the subject matter but fails to mention wherein the third data packet is sent in response to the revert confirmation message with one of a part of the data with one of a part of the data originally included in the first data packet and all of data originally included in the first data packet. However, Dotling et al. from a similar field of endeavor disclose wherein the third data packet is sent in response to the revert confirmation message with one of a part of the data with one of a part of the data originally included in the first data packet and all of data originally included in the first data packet (see column 1 lines 39-47). Thus it, would have been obvious to one ordinary skill in the art at the time invention was made to include Dotling et al.



combination of data in a packet scheme into Kuchibhotla packet transmission scheme. The method can be implemented in the packet transmission and receiving unit. The motivation of doing this is to reduce the bandwidth.

10. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kuchibhotla et al. in view of Kohno (U.S. PGPub. No. 2003/0120802).

**For claim 17**, Kuchibhotla et al. disclose all the subject matter but fails to mention including selecting to transmit the immediately prior data packet based on a count of prior retransmissions of the immediately prior data packet. However, Kohno from a similar field of endeavor disclose selecting to transmit the immediately prior data packet based on a count of prior retransmissions of the immediately prior data packet (see paragraph 98 lines 1-9, paragraph 111 lines 9-12, reference explains number of counts option). Thus, it would have been obvious to one ordinary skill in the art at the time of invention was made to include Kohno count scheme into Kuchibhotla et al. transmission scheme. The method can be implemented in a packet. The motivation of doing this is to reduce the risk of buffer overflow (see paragraph 113 lines 7-11).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MOHAMMAD ANWAR whose telephone number is

(571)270-5641. The examiner can normally be reached on Monday-Thursday, 9am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derrick W. Ferris can be reached on 571-272-3123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MOHAMMAD ANWAR  
Examiner  
Art Unit 2416

/M. A./  
Examiner, Art Unit 2416

/Derrick W Ferris/

Supervisory Patent Examiner, Art Unit 2416